

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Harry Newlest Charles,)	Civil Action No. 8:15-4188-MBS
)	
Petitioner,)	
)	
v.)	
)	ORDER AND OPINION
Warden of Manning Pre-Release Center,)	
)	
Respondent.)	

Petitioner Harry Newlest Charles (“Petitioner”), proceeding *pro se*, brought this action against Respondent Warden of Manning Pre-Release Center, pursuant to 42 U.S.C. § 2254.

I. FACTUAL AND PROCEDURAL BACKGROUND

On October 9, 2015, Petitioner filed the instant petition while he was incarcerated at the Manning Pre-Release Center in Columbia, South Carolina. ECF No. 1. Petitioner brought this action seeking to vacate his 2000 state armed robbery and conspiracy conviction entered in the Florence County Court of General Sessions. *Id.*

In accordance with 28 U.S.C. § 636(b) (2012) and Local Civil Rule 73.02, D.S.C., the matter was referred to United States Magistrate Judge Jacquelyn D. Austin for a Report and Recommendation. The Magistrate Judge issued a Report and Recommendation on December 10, 2015. ECF No. 16. The Magistrate Judge took judicial notice of two previous § 2254 petitions filed by Petitioner contesting the same conviction that Petitioner seeks to vacate in the instant action.¹ The

¹ See (1) *Charles v. South Carolina*, C/A No. 2:07-573-DCN-RSC (D.S.C. July 25, 2007), ECF No. 27, *affirmed by*, Order (D.S.C. Aug. 13, 2007), ECF No. 30, *appeal dismissed by*, (4th Cir. Feb. 6, 2008), ECF No. 37; (2) *Charles v. Reed*, C/A No. 2:10-1801-MBS-JDA (D.S.C. July 29, 2010), ECF No. 8, *adopted by*, Order (D.S.C. Aug. 30, 2010), ECF No. 11.

Magistrate Judge found that this action is a successive § 2254 action and that it does not appear that Petitioner obtained the necessary authorization from the United States Court of Appeals for the Fourth Circuit to file a successive § 2254 action. Accordingly, the Magistrate Judge recommended that the Complaint be summarily dismissed without prejudice. *Id.* Petitioner filed an objection to the Report and Recommendation on January 6, 2016. ECF No. 19. In his objection, Petitioner alleges that his appellate counsel was ineffective for informing Petitioner to file this action in this court's jurisdiction. *Id.*

II. DISCUSSION

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight and the responsibility for making a final determination remains with this court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). This court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. *Id.*

The court is charged with making a *de novo* review of any portions of the Report and Recommendation to which a specific objection is made. *Id.* The district court need not conduct a *de novo* review when a party makes only general and conclusory objections that do not direct the court to a specific error in the Magistrate Judge's proposed findings and recommendations. *Orpiano v. Johnson*, 687 F.2d 44, 47-48 (4th Cir. 1982). Petitioner's response does not rebut the Magistrate Judge's conclusion that the Complaint should be summarily dismissed.

The court adopts the Report and Recommendation of the Magistrate Judge and incorporates it herein by reference. The Complaint is dismissed with prejudice.

IT IS SO ORDERED.

/s/ Margaret B. Seymour

Margaret. B. Seymour
Senior United States District Judge

Columbia, South Carolina

July 20, 2016